

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN**

BAD RIVER BAND OF THE LAKE
SUPERIOR TRIBE OF CHIPPEWA
INDIANS OF THE BAD RIVER
RESERVATION,

Plaintiff,

v.

ENBRIDGE ENERGY COMPANY, INC.,
and ENBRIDGE ENERGY, L.P.,

Defendants.

Case No. 3:19-cv-00602-wmc

Judge William M. Conley
Magistrate Judge Stephen L. Crocker

ENBRIDGE ENERGY COMPANY, INC.,
and ENBRIDGE ENERGY, L.P.,

Counter-Plaintiffs,

v.

BAD RIVER BAND OF THE LAKE
SUPERIOR TRIBE OF CHIPPEWA
INDIANS OF THE BAD RIVER
RESERVATION and NAOMI TILLISON,
in her official capacity,

Counter-Defendants.

**BAD RIVER BAND OF THE LAKE SUPERIOR TRIBE OF CHIPPEWA INDIANS’
PRETRIAL SUBMISSION**

In its Opinion and Order of September 16, 2022, this Court specified various filing requirements to be completed by the parties prior to trial, stating that “[t]o the extent [such] requirements ... conflict with the court’s ‘Bench Trial Procedures for Pretrial Submissions,’ the parties should follow the requirements in this order.” Dkt. #369 at 3. The parties have

completed the prescribed submissions. Several items discussed in the Court’s Bench Trial Procedures are not covered by the Court’s September 16 Opinion and Order and do not conflict with the requirements contained therein. The Bad River Band (the “Band”) addresses one of those—the probable length of trial—here. While the Band had originally intended to include its proposed findings of fact with this submission, the parties have jointly moved for an extension of time to file such findings, Dkt. # 522, so that they can calibrate them to this Court’s Opinion and Order of October 7, 2022, Dkt. #521. The Band also includes herein a statement regarding its requested relief at the conclusion of trial to conform that request to the course of proceedings in this case.

I. Probable Length of Trial

The Band anticipates a probable length of fifty hours for its case-in-chief, exclusive of cross-examination, for all issues remaining for decision in this case. The Band notes that the parties are engaged in ongoing analysis and discussions regarding the anticipated length and phasing of trial, including in light of this Court’s October 7 Opinion and Order. The Band will be prepared to discuss these issues further at the October 11 pre-trial conference.

II. Requested Relief

The Band seeks the following relief at the conclusion of trial: (1) Profits-based restitution for “Enbridge’s trespass and unjust enrichment,” Summ. J. Op. and Order, Dkt. #360, at 29, “*both* to address the violation of the Band’s sovereign rights and to take away what otherwise would be a strong incentive for Enbridge to act in the future exactly as it did here,” *id.* at 36 (emphasis in original); and (2) A permanent injunction against further operation of Line 5 on the Band’s Reservation, to take effect in twelve to eighteen months to avoid any adverse impacts from an immediate shutdown of the pipeline, Band Trial Brief, Dkt. #453, at 58; but requiring

cessation of Line 5's operation if fewer than twenty feet remain between the Bad River channel bank and any portion of Line 5, in keeping with the monitoring and shutdown protocol outlined in Appendix O of the report submitted by Wright Water Engineers, Dkt. #484-18, at O-11-17.

The Band intends for this request for relief to supersede the prayers contained in its prior pleadings. *DeliverMed Holdings, LLC v. Schaltenbrand*, 734 F.3d 616, 628 (7th Cir. 2013) (“[T]he pretrial order is treated as superseding the pleadings and establishes the issues to be considered at trial.” (citation omitted)).

Dated: October 8, 2022

Respectfully submitted,

Erick Arnold
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